

IN THE MATTER OF

§ BEFORE THE TEXAS

§ STATE BOARD OF

ROBERT A. ALVAREZ, DPM

§ PODIATRY EXAMINERS

SETTLEMENT AGREEMENT

I.

Statement of Facts

1. On or about October 15, 1993, and again on October 22, 1993, the Texas State Board of Podiatry Examiners communicated to Robert A. Alvarez, DPM, that the Board was reviewing the circumstances surrounding the death of a patient following a bunionectomy performed by Dr. Alvarez. Additionally considered were the circumstances involving other patients of Dr. Alvarez: [REDACTED], date of injury May 31, 1991; [REDACTED], date of injury June 20, 1991; [REDACTED], date of injury April 25, 1991; [REDACTED], date of injury August 4, 1987; and [REDACTED], date of injury July 6, 1992.
2. The above communication offered Dr. Alvarez the opportunity to participate in a meeting pursuant to section 2001.054(c) of the Texas Government Code. This section provides a licensee with the opportunity to respond to allegations and to show compliance with the Podiatry Practice Act.
3. A meeting was held on November 19, 1993.
4. Representing the Texas State Board of Podiatry Examiners at the meeting was Tom Garrison, DPM, Board member, Robert Lansford, Executive Director of the Board, and Cynthia Villarreal-Reyna, Assistant Attorney General, attorney for the Board. Dr. Alvarez appeared at the meeting represented by counsel, Ron Stading.
5. Dr. Alvarez and the representatives of the Board discussed certain matters relating to the allegations.

6. The nature of the allegations was that Dr. Alvarez performed a bunionectomy on the left foot of patient [REDACTED] on or about July 6, 1992. The patient contacted Dr. Alvarez on July 7, 1992, concerning pain and swelling. On July 8, 1992, the patient returned to Dr. Alvarez's office complaining of pain and swelling in his foot. That same day, the patient's wife notified Dr. Alvarez that the patient was experiencing numbness in the lower part of both legs. Patient was taken to the Vista Hills Hospital emergency room and the admitting diagnosis included necrotizing fasciitis of the left foot extending to the leg and upper thigh and septic shock. The patient's left leg was amputated due to septic shock and gangrene. The patient died on July 9, 1992. The circumstances involving Dr. Alvarez' patients referenced in item number one (1) of this documents were also reviewed.

7. No formal complaint has been brought against Dr. Alvarez.

8. As it relates to the above allegations, Dr. Alvarez does not dispute the facts.

9. Dr. Alvarez understands that he has the option to continue to insist on proof by the Board of any violation at a contested case hearing under the Administrative Procedures Act.

10. In order to avoid the cost of a contested case hearing and in the interest of cost, efficiency and fairness to the Board and himself, Dr. Alvarez desires to resolve this matter by this Settlement Agreement.

11. Dr. Alvarez agrees to resolve such dispute by compromising and settling all claims and matters of any kind whatsoever relating to such allegations listed above and that the full terms and conditions of such compromise settlement are set forth in this Settlement Agreement. Dr. Alvarez understands that the execution of this Settlement Agreement is not an admission of any fact the same being expressly denied.

## II.

### Settlement Terms

12. All agreements are with Dr. Garrison, who is the Investigative Liaison acting as the board's representative in this matter, and Dr. Alvarez. The Settlement Agreement is to be presented to the Board as a recommendation. If the Board elects to reject this Settlement

Agreement, the Board will not use this Settlement Agreement for any purposes and the same will be null and void. The terms of the agreement, if accepted by the Board, begin effective October 24, 1994.

13. If the terms of this Settlement Agreement are complied with, the Board agrees not to bring any further disciplinary action on any matter covered by such Settlement Agreement.

14. Dr. Alvarez agrees that his podiatric license will be suspended for a period of five (5) years from the date this Agreement is approved by the Board with all such suspension probated except for the first thirty (30) days provided Dr. Alvarez complies with the following conditions:

(A) Dr. Alvarez shall not perform any tasks or duties that require a license from the Board during the initial 30-day period of suspension, save and except those requested of him during the surgical residency. Further, Dr. Alvarez agrees that he will comply with all applicable rules and regulations governing the practice of podiatry.

(B) During the surgical training course period, Dr. Alvarez will not independently perform or assist in any surgical procedure, save and except those requested of him during the surgical residency, unless pre-approval is obtained from the Board, Dr. Garrison, in connection with the following requirements:

(a) Dr. Alvarez is to attend, at his own expense, a surgical training course, a four month mini-residency, at the University of Texas Health Science Center at San Antonio, Texas. Dr. Alvarez must obtain a letter of approval certifying competency in surgery and pre-operative and post-operative evaluation. Should the University be unable to certify competency in all procedures or a reas, the Board would consider restricting Dr. Alvarez' surgical privileges until such time that he can receive training and expertise and can demonstrate to the Board competency in his surgical and perisurgical abilities. Upon completion of additional training, Dr.

Alvarez may be granted extended surgical privileges assuming competency is demonstrated to Dr. Garrison or the Board.

(b) Dr. Alvarez is to attend, at own expense, the One Week Post Graduate Course presented by the Podiatry Institute at Northlake Regional Medical Center in Tucker, Georgia.

(C) Dr. Alvarez shall perform 40 hours of additional CME's during each of the five years following the entry of the Order. These CME hours are in addition to those required for annual license renewal. These additional CME hours must be accomplished by attendance at seminars or classes approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association. The programs selected shall include subject matter on Infectious Diseases, Surgical Procedures, Sterilization for Surgery, Patient Post-Operative Monitoring, and other subjects deemed appropriate. The Board or its designated representative, Dr. Garrison, must pre-approve the selected training prior to credit for CME's.

(D) Dr. Alvarez agrees that he will abide by section 376.7 of Title 22 of the Texas Administrative Code, which sets forth the Conditions of Suspension of License. Section 376.7 provides as follows:

(a) Suspension of a license means that the office of the licensee is to be closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and the licensee may not participate for income in any professional activity that is directly related to diagnosis or treatment of a patient. The licensee may refer his patients to another practitioner for treatment or consultation during the pendency of the suspension, but the licensee shall not derive any income from such referrals. The licensee may allow into his office another practitioner to see his patients during the pendency of the suspension, but the licensee shall derive no income from the other

practitioner by way of referral fees, rent for the office space, or the like.

(b) The licensee's office may remain open for the purposes of administrative work, including making future appointments, arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters not directly related to the diagnosis and treatment of patients.

(c) If the suspended licensee shares offices with another practitioner, the other practitioner shall be allowed to continue his practice normally, but the suspended licensee shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients that would see or normally see the licensee who is under suspension.

(E) Dr. Alvarez agrees that, during the five (5) year period of suspension and probation, only to perform any surgical tasks, duties, or procedures only if permission is granted by the Board or by a Board member and only after the completion of the mini residencies and certification of competency as stated in 14(B). Said surgical task, duty or procedure may be monitored by the Board or a podiatrist selected by the Board. Monitoring by the Board, or a podiatrist selected by the Board, may be an option the Board or Dr. Garrison may request when competency is not clearly demonstrated.

(F) Dr. Alvarez agrees that he will appear before the Board at an appropriate time described by the Board to provide sufficient evidence that he is competent to practice podiatric surgery with reasonable skill and safety to patients and to inform the Board on his progress in providing effective care and treatment to patients. Dr. Alvarez and Dr. Garrison agree that this will be accomplished by Dr. Garrison's random review of patients' files to observe Dr. Alvarez' competency.

(G) Dr. Alvarez agrees that a violation of this Agreement causing injury to a patient within the five (5) year period of suspension and probation may result in a hearing and that hearing may result in revocation of the probation and the imposition of the remaining portion of the suspension or other disciplinary action.

(H) Dr. Alvarez agrees to advise the Board of any change of address, mailing or office, within ten (10) days of such occurrence.

(I) Dr. Alvarez understands that this Settlement Agreement supersedes any other written or oral statements or agreements.

### III.

#### General Provisions

15. Effective Date. This Settlement Agreement shall take effect and become binding only upon the approval by the Board and entering of an order under the terms attached hereto.

16. No waiver. No waiver of any of the terms of this Settlement Agreement shall be valid unless in writing. No waiver of default of any terms of the Settlement Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

17. Governing Law. This Settlement Agreement is being entered into pursuant to TEX. REV. CIV. STAT., article 4567-4575, the Podiatry Practice Act, and the TEX. GOV'T CODE, section 2001.001 et seq., the Administrative Procedure Act.

18. Acknowledgment of Entire Agreement. Dr. Alvarez acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Alvarez has executed this instrument freely and of his own accord.

19. Notice. Any notice to be given under the terms of this Settlement Agreement by either party to this order shall be in writing and be delivered by personnel delivery or certified mail, return receipt requested, to the following addresses:

Robert A. Alvarez, DPM

5730 E. Paisano Dr.  
El Paso, Texas 79925

Texas State Board of Podiatry Examiners  
3420 Executive Center Drive, Suite 305  
Austin, Texas 78731

THIS SETTLEMENT AGREEMENT IS A PUBLIC RECORD.

I, ROBERT A. ALVAREZ, D.P.M. HAVE READ AND UNDERSTAND THE FOREGOING SETTLEMENT AGREEMENT. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS SETTLEMENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATE: 10/25, 1994

Robert A. Alvarez D.P.M.

ROBERT A. ALVAREZ, D.P.M.

STATE OF TEXAS §

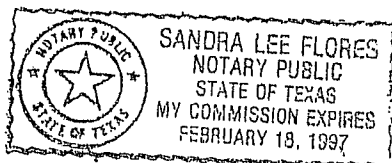
COUNTY OF EL PASO §

BEFORE ME, on this day personally appeared Robert A. Alvarez, D.P.M., known to me, who first, being duly sworn, signed the foregoing Settlement Agreement in my presence.

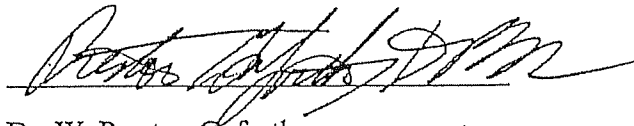
SIGNED on this the 25<sup>th</sup> day of October, 1994

Sandra Lee Flores

Notary Public, in and for the State of Texas



SIGNED AND ENTERED by the Presiding Officer of the Texas State Board of Podiatry  
on this the 9th day of NOVEMBER, 1994.



Dr. W. Preston Goforth

Presiding Officer

*Nancy Anne Quinn*  
11/9/94

